IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 707 of 2002

to

FIRST APPEALNo 708 of 2002

with

CIVIL APPLICATION Nos 2730 & 2731 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

MAJITHIYA JETENDRA JAYSHUKHRAY& JITUBHAI JAYSHRAY MAJITHIYA

Appearance:

MR RAJNI H MEHTA for Appellants

MR RC KAKKAD for Respondent No. 1

Respondent No. 2-3 served

MR KS JHAVERI for Respondent No. 4

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 06/05/2002

COMMON ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. These two Appeals under Section 173 of the Motor Vehicles Act are directed against the award and judgment passed in Motor Accident Claim Petition Nos. 12/98 and 13/98 respectively by the Motor Accident Claims Tribunal (Main) at Bhavnagar, whereby besides the other reliefs, the Claims Tribunal awarded interest at the rate of 12% from the date of the application till the realisation of the amount in both the impugned awards passed in both the claims petitions, as above.

2. Vide Order dated 9.4.2002, notice for final disposal was issued to the respondents. Since the only question raised in the Appeals relate to the rate of interest awarded by the Claims Tribunal on the amount of compensation awarded, relying on the decision in the case of KAUSHNUMA BEGUM vs. NEW INDIA ASSURANCE CO. LTD., reported in 2001 ACJ 428.

3. Mr. R.C. Kakkad, learned Advocate appeared for the respondent - claimant in response to the notice issued for final disposal, as above.

4. Since the appeals are confined to the grant of interest at the rate of 12% there is no need to call for the record and proceedings of the claim petition from the Trial Court.

5. It is submitted by Mr. A.R.Mehta, learned counsel for the Insurance Company that the rate of interest more than 9% could not have been awarded by the Claims Tribunal in view of the judgement in the case of Kaushnuma Begum (supra). It is further submitted that 9% interest could have been awarded by the Claims Tribunal in view of the aforesaid Supreme Court's judgment.

6. It is submitted by Mr. R.C. Kakkad for the respondent - claimant that even other wise the Division Bench of this Court in First Appeal 6004/99 has awarded the interest at the rate of 12% and in this regard the learned advocate appearing for the claimant has placed on

record the copy of the judgment rendered in First Appeal No. 6004/99 by the Division Bench of this Court. Referring to the judgment of the Division Bench of this Court, in First Appeals No. 4446/2001 to 4453/2001, it has been submitted that slab system could be adopted for awarding the interest. Mr. Kakkad has also invited our attention to the decision of the Supreme Court in the case of DEVI DAYAL KANSAL vs. RAJ ROOP, reported in 2002 ACJ 338.

8. In the case of Devi Dayal Kansal (supra), the Supreme Court was called upon to consider the question whether the appellants - claimants who are dependents of the deceased, should be awarded interest on the enhanced amount of compensation granted by the High Court. The Supreme Court observed that once the High Court has thought it fit to enhance in appeal compensation payable to the dependents of the deceased, in fairness, interest should have been granted on the enhanced compensation unless there was any cogent reason for denying them the benefit which does not exist in the facts of the present case and the High Court has also not noted the same.

9. It will be seen that it was the non-granting of interest on the enhanced compensation amount, the Supreme Court awarded the interest under Section 171 of the M.V. Act at the rate of 12% as per necessary consequence on the enhanced amount of compensation granted by the High Court.

10. In the case of Kaushnuma Begum (supra) in para 23, the Supreme Court observed as follows :

> "Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf." Earlier, 12 per cent was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9 per cent on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 per cent per annum from the date of the claim made by the appellants. The amount of Rs. 50,000/- paid by the insurance company under section 140 shall be

deducted from the principal amount as on the date of its payment and interest shall be recalculated on the balance amount of the principal sum from such date."

11. It will be seen that in the case of Kaushnuma Begum (supra), the Supreme Court has assigned reason as to why interest at the rate of 9% should be awarded on the amount of compensation under Section 171 of the Motor Vehicles Act.

12. We are unable to accept the submission of Mr. Kakkad that two judgments of Division Bench of this High Court taking the view of grant of 12% interest be accepted and the interest at the rate of 12% be granted.

13. In the Case of Kaushnuma Begum (supra), the Supreme Court has assigned the reason for grant of interest at the rate of 9% while in the case of Devi Dayal Kansal (supra) the question being grant of interest on the enhanced amount of compensation under Section 171 of the Motor Vehicles Act, no reason having been stated for grant of interest at the rate of 12%, in our opinion, the claimant in the present case would be entitled to interest at the rate of 9% on the awarded amount.

14. In view of the above, the appeals are allowed and the claimants are entitled to interest at the rate of 9% from the date of application till the realisation of the awarded amount.

15. In view of the above order passed in the main Appeals, Civil Applications No. 2730 and 2731 of 2002 do not survive and are disposed of accordingly.

(N.G. Nandi, J.)

(J.R. Vora, J.)

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